



JUDICIAL INVESTIGATION COMMISSION

City Center East - Suite 1200 A
4700 MacCorkle Ave., SE
Charleston, West Virginia 25304
(304) 558-0169 • FAX (304) 558-0831

June 4, 2021

Re: JIC Advisory Opinion 2021-13

Dear Judge :

Your request for an advisory opinion to Counsel was recently reviewed by the Judicial Investigation Commission. The factual scenario giving rise to your request is as follows:

Your law clerk lives in a different judicial circuit from where she works. The law clerk's neighbors, who are her close family friends, have opened a winery on the farm next to where she lives. The law clerk would like to work weekends at the winery. The law clerk's tasks would include assisting with pruning, picking, bottling, labeling, and cleaning. She would help with wine tastings for customers and wine or merchandise sales. The winery is also planning to operate as a wedding venue and the law clerk would also help in that regard. She would perform these tasks for a few hours on Saturdays or Sundays when they need extra hands. The winery is open from 1-6 p.m. Saturdays and Sundays. Based upon information and belief, the owners have a drink limit policy in place for customers.

You want to know if it would violate the Code of Judicial Conduct for your clerk to engage in this outside employment. To address your question, the Commission has viewed Rule 3.1 of the Code of Judicial Conduct which provides:

Rule 3.1 – Extrajudicial Activities in General

A judge may engage in extrajudicial activities, except as prohibited by law or this Code. However, when engaging in extrajudicial activities, a judge shall not:

- (A) participate in activities that will interfere with the proper performance of the judge's judicial duties;
- (B) participate in activities that will lead to frequent disqualification of the judge;
- (C) participate in activities that would appear to a reasonable person to undermine the judge's independence, integrity, or impartiality;
- (D) engage in conduct that would appear to a reasonable person to be coercive; or
- (E) make use of court premises, staff, stationery, equipment, or other resources, except for incidental use for activities that concern the law, the legal system, or the administration of justice, or unless such additional use is permitted by law.

Comment [1] to the Rule states that "to the extent that time permits, and judicial independence and impartiality are not compromised, judges are encouraged to engage in appropriate extrajudicial activities."

Based upon the foregoing, the Commission is of the opinion that your clerk's part-time employment with the winery would not violate this Rule or any other provision of the Code since she would only work on the weekends and any potential matters involving the winery would be subject to a different jurisdiction. Importantly, before your clerk can accept the part-time position, she must have the written approval of Joe Armstrong, Administrative Director of the Supreme Court of Appeals of West Virginia.

The Commission hopes that this opinion fully addresses the issues which you have raised. Please do not hesitate to contact the Commission should you have any questions, comments or concerns.

Sincerely,


Alan D. Moats, Chairperson
Judicial Investigation Commission

ADM/tat

cc: Administrative Director Joe Armstrong